

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

TERRY SPURGEON, as custodian for the benefit of James E. Spurgeon, individually and on behalf of all others similarly situated,
Plaintiff,
v.
PACIFIC LIFE INSURANCE COMPANY,
Defendant.

CASE NO. 06-983-GPM

JAMES E. SPURGEON, individually and on behalf of all others similarly situated,
Plaintiff,
v.
PACIFIC LIFE INSURANCE COMPANY,
Defendant.

**PACIFIC LIFE INSURANCE COMPANY'S
MOTION TO DISMISS**

Pacific Life Insurance Company ("Pacific Life") moves to dismiss the complaint in this case pursuant to Federal Rule of Civil Procedure 12(b)(6) and the Securities Litigation Uniform Standards Act ("SLUSA"), *codified at* 15 U.S.C. §§ 77p & 78bb(f).

Dismissal is required under the United States Supreme Court's unanimous decision in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 126 S. Ct. 1503 (2006), and the Seventh Circuit's equally unanimous panel decision in *Bradfish v. Templeton Funds, Inc.*, 2006 U.S. App. LEXIS 12394 (7th Cir. May 19, 2006), *rehearing denied* (with additional explanation) (June 15, 2006), *motion to vacate denied* (June 19, 2006). These 2006 decisions, by controlling

authority, establish that this case falls within SLUSA, and as such, may not be maintained in any court. *See* 15 U.S.C. §§ 77p(b), 78bb(f)(1).

The Supreme Court's and Seventh Circuit's decisions make clear that Spurgeon is attempting to slip by the legal framework Congress expressly provided by bringing this securities class action under state law. They also make clear that Congress intended such lawsuits to be dismissed at the earliest stage of litigation. Accordingly, Pacific Life moves this Court to dismiss plaintiff's complaint with prejudice.

Dated: December 5, 2006

Respectfully submitted,
PACIFIC LIFE INSURANCE COMPANY
By its attorneys,

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Certificate of Service

The undersigned certifies that a copy of the foregoing has been served upon the attorneys of record on this 5th day of December, 2006, by operation of the Court's ECF system, which will send notice of said filing to the following:

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and also by mailing copies to the following by enclosing same in envelopes addressed as below, and depositing them in the U. S. Mail at Edwardsville, Illinois, at 5 p.m.:

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